

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYWEE GROUP LTD.,

Plaintiffs,

v.

HTC CORPORATION, and HTC AMERICA,  
INC.,

Defendants.

Case No.: 2:17-cv-00932-JLR

**THIRD-PARTY DEFENDANT  
STMICROELECTRONICS, INC.'S  
MOTION FOR SANCTIONS PURSUANT  
TO RCW 4.84.185**

NOTE ON MOTION CALENDAR: JUNE 8,  
2018

HTC CORPORATION, and HTC AMERICA,  
INC.,

Third-Party Plaintiffs,

v.

STMICROELECTRONICS N.V.,  
STMICROELECTRONICS, INC., and CYWEE  
MOTION GROUP LTD.,

Third-Party Defendants.

ORAL ARGUMENT REQUESTED

1 Third-party defendant STMicroelectronics, Inc. (“ST Inc.”) respectfully moves for fees and  
2 expenses from third-party plaintiffs HTC Corporation and HTC America, Inc. (collectively,  
3 “HTC”) pursuant to Washington Revised Code (“RCW”) Section 4.84.185.

4 HTC filed a third-party complaint (“TPC”) against ST Inc. and its parent company,  
5 STMicroelectronics N.V. (“ST N.V.”), asserting claims for defense, indemnity, breach of  
6 warranty, and contribution for the patent infringement allegations brought against HTC by  
7 plaintiff CyWee Group Ltd. (“CyWee”). However, there are no arguably relevant contracts or  
8 purchase orders between HTC and ST Inc. Nor has ST Inc. ever sold or supplied accused products  
9 to HTC, or agreed to defend and indemnify HTC for any third-party patent infringement  
10 allegations. Additionally, no ST-branded product is accused by CyWee of patent infringement in  
11 the underlying litigation—rather, CyWee’s allegations of infringement have at all times been  
12 directed towards HTC’s wireless communications devices, which utilize Google’s Android  
13 operating system and a Qualcomm chip.

14 HTC clearly knew that its claims were frivolous, yet pursued them anyway before  
15 ultimately opting not to oppose ST Inc.’s motion to dismiss. Unfortunately, HTC remains  
16 undeterred. It is continuing its pursuit of ST N.V., and recently moved for leave to amend the  
17 TPC to add yet another foreign entity, STMicroelectronics Asia Pacific Pte. Ltd. (“ST Asia”),  
18 even though there are still no ST-branded products accused of patent infringement by CyWee.

19 This is not ST Inc.’s fight, and it should have never been forced to spend legal fees—to the  
20 tune of nearly \$60,000 before accounting for this motion—defending against HTC’s frivolous  
21 claims. As such, and to deter HTC’s ongoing harassment and abuse of the judicial system—the  
22 underlying policies behind RCW 4.84.185—ST Inc. respectfully requests that the Court award it  
23 fees and costs incurred in defending this matter.

24 **I. Facts**

25 On July 6, 2017, CyWee filed an Amended Complaint asserting that HTC infringes two  
26 CyWee patents by selling a variety of mobile phones. Dkt. # 20. CyWee’s Amended Complaint  
27 specifically identified the combination of hardware components in the phones and the Android  
28

operating system as the basis for alleged infringement, and attached claim charts reflecting that position. E.g., Dkt. # 20 at ¶¶ 38-39. For example, in its Amended Complaint, CyWee identified “https://android.googlesource.com” as the source of the accused computer code. Dkt. # 20, Exh. A, pp.4-9. Nowhere in the Amended Complaint did CyWee identify an ST-branded product.

Nevertheless, on October 2, 2017, HTC sent a letter addressed jointly to ST Inc. and ST Asia, a foreign affiliate of ST Inc. based in Singapore, demanding defense and indemnification of CyWee’s patent infringement claims. *See* Dkt. # 66, Exh. A. The letter enclosed a purchase order dated July 28, 2017, in which HTC Corporation sought to order microcontrollers from ST Asia. *Id.* That purchase order specifies that dispute resolution must occur in Taiwan. *Id.* at ¶ 12. ST Inc. did not receive, fulfill, or play any role in connection with this purchase order. Dkt. # 65, ¶ 3. Nor has ST Inc. ever sold or supplied to HTC the microcontroller product referenced in the purchase order (STM32F411CEYTR), or any product similar thereto. *Id.*

On December 29, 2017, CyWee served its infringement contentions on HTC (pursuant to Local Patent Rule 120), which again focused on Android computer code and a Qualcomm chip. Dkt. 66, Exh. B. The infringement contentions make no mention of any ST-branded product. *Id.*

Undeterred, on January 11, 2018, HTC filed the TPC against ST Inc. and ST N.V., asserting claims for defense and indemnification, breach of warranty, and contribution.<sup>1</sup> Dkt. # 43. The TPC did not identify any particular part numbers of products allegedly supplied by ST Inc. or ST N.V., or particular purchase order agreements. Rather, the TPC alleged that ST Inc. and ST N.V. (collectively, “STM”) “sold and supplied to HTC certain motion sensor devices and technology, including the Sensor Fusion Hub . . . pursuant to purchase order agreements that obligate STM to defend and indemnify HTC with respect to claims of patent infringement.” *Id.* at ¶ 32.

On March 9, 2018, CyWee filed a Second Amended Complaint, which maintained the same core infringement allegations against HTC. Dkt. # 61. In other words, CyWee continued to

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<sup>1</sup> The TPC also names CyWee Motion Group Ltd. as a third-party defendant and asserts an additional claim against that entity.

1 allege that HTC infringes two CyWee patents based on the combination of hardware components,  
2 including a Qualcomm chip, and the Android operating system. Dkt. # 61, Exhs. A-B.

3 HTC still did not withdraw the TPC. Instead, ST Inc. was forced to file a motion to  
4 dismiss, explaining that it had no connection to this litigation whatsoever, and that, even if it had  
5 supplied products to HTC or agreed to defense and indemnification (which it did not), CyWee has  
6 consistently identified Android software and a Qualcomm chip within the accused HTC handsets,  
7 and not any ST-branded product, as the basis for its patent infringement claims. Dkt. # 64. HTC  
8 did not oppose ST Inc.'s motion to dismiss (Dkt. # 77), and the Court granted it on April 23, 2018.  
9 Dkt. # 79.

10 ST Inc. incurred \$57,351.06 in fees and costs up through the Court's dismissal, which  
11 includes fees and costs associated with analyzing HTC's TPC, attempting to negotiate dismissal  
12 without the need for motion practice, and ultimately filing its motion to dismiss. *See Declaration*  
13 *of Matt Berkowitz in Support of STMicroelectronics, Inc.'s Motion for Sanctions* ("Berkowitz  
14 Decl.," filed concurrently with this motion.<sup>2</sup> ST Inc. has already incurred in excess of \$7,500 in  
15 additional fees associated with this motion, and will likely incur more unless HTC elects not to  
16 oppose. *Id.*

17 Despite HTC's prior statement of non-opposition to ST Inc.'s motion to dismiss, it  
18 continues to pursue the same claims against ST N.V. (*See* Dkt. # 68), and, more recently, has  
19 moved for leave to add yet another entity, ST Asia, as an additional third-party defendant. Dkt. #  
20 87. HTC has never explained why these companies are differently-situated than ST Inc., given  
21 that CyWee has never accused ST-branded products, and the only purchase order HTC could  
22 possibly be relying upon provides for dispute resolution in Taiwan.

## 23 **II. Argument**

24 RCW 4.84.185 provides:

25 In any civil action, the court having jurisdiction may, upon written findings by the  
26 judge that the action, counterclaim, cross-claim, third party claim, or defense was  
27 frivolous and advanced without reasonable cause, require the nonprevailing party to  
pay the prevailing party the reasonable expenses, including fees of attorneys,

28 <sup>2</sup> ST Inc. can submit billing records for the Court's review upon the Court's request.

1 incurred in opposing such action, counterclaim, cross-claim, third party claim, or  
 2 defense. This determination shall be made upon motion by the prevailing party  
 3 after a voluntary or involuntary order of dismissal, order on summary judgment,  
 4 final judgment after trial, or other final order terminating the action as to the  
 5 prevailing party. The judge shall consider all evidence presented at the time of the  
 6 motion to determine whether the position of the nonprevailing party was frivolous  
 7 and advanced without reasonable cause. In no event may such motion be filed more  
 8 than thirty days after entry of the order.

9 A frivolous action, for purposes of this statute, is one that “cannot be supported by any  
 10 rational argument on the law or facts.” *Eller v. East Sprague Motors & R.V.’s, Inc.* 244 P.3d 447,  
 11 453 (Wash. Ct. App. 2010) (quoting *Clarke v. Equinox Holdings, Ltd.*, 783 P.2d 82, *review*  
 12 *denied*, 777 P.2d 1050 (Wash. 1989)). The action or lawsuit is to be interpreted as a whole. *Biggs*  
 13 *v. Vail*, 830 P.2d 350, 352 (Wash. 1992). However, a showing of bad faith is not required; “[i]t is  
 14 enough that the action is not supported by any rational argument and is advanced without  
 15 reasonable cause.” *Eller*, 244 P.3d at 453 (reversing trial court’s denial of a fees award on the  
 16 basis that a showing of bad faith is not required).

17 Washington courts have awarded fees under this section where claims, such as those  
 18 advanced here by HTC, are brought and maintained without any supporting evidence. *See, e.g.*,  
 19 *Integrity Trust by Cuddeback v. Capital One, N.A.*, No. 16-927, 2017 WL 2839819, \*2 (W.D.  
 20 Wash. April 5, 2017) (awarding attorneys’ fees where Plaintiff “knowingly filed a baseless lawsuit  
 21 . . . ”); *Lucas v. Camacho*, No. 11-5350, 2012 WL 4120310, \*2 (W.D. Wash. Sept. 18, 2012)  
 22 (awarding attorneys’ fees when plaintiffs failed to submit admissible evidence in support of their  
 23 claims in a motion for summary judgment); *Tracy v. State of Wash.*, No. 09-5588, 2010 WL  
 24 5395029, \*4 (W.D. Wash. Dec. 27, 2010) (awarding attorneys’ fees after summary judgment  
 25 when plaintiffs made no arguments regarding defendant and did not present any evidence showing  
 26 defendant was liable under any causes of action stated in the complaint); *Grace v. Hagy*, No.  
 27 62902-6-I, 2009 WL 3808574, \*3 (Wash. Ct. App. 2009) (awarding attorneys’ fees when plaintiff  
 28 responded to defendant’s motion to dismiss by withdrawing plaintiff’s initial claims and  
 replacing them with equally meritless claims).

1 HTC's claims against ST Inc. were particularly frivolous. HTC filed the TPC alleging that  
 2 ST Inc. "sold and supplied to HTC certain motion sensor devices and technology, including the  
 3 Sensor Fusion Hub . . . pursuant to purchase order agreements that obligate [ST Inc.] to defend  
 4 and indemnify HTC with respect to claims of patent infringement." This was blatantly false.  
 5 There is no such purchase order agreement, and, as HTC knows, ST Inc. never supplied it with  
 6 any "motion sensor devices." Moreover, CyWee has never accused any ST-branded products of  
 7 infringement, so there is nothing for ST Inc. (or any ST entity) to defend and indemnify. Simply  
 8 put, *none of* HTC's claims against ST Inc. had any basis in law or fact.

9 The policy behind RCW 4.84.185 is one of deterrence of harassment and abuses of the  
 10 judicial system. *See In re Longview Fibre Co.*, 1997 WL 314425, at \*3 (Wash. Ct. App. March  
 11 17, 1997); *Cf. Biggs v. Vail*, 876 P.2d 448, 541 (Wash. 1994)(en banc) ("A proper sanction [under  
 12 CR 11] assessed at the time of a transgression will ordinarily have some measure of deterrent  
 13 effect on subsequent abuses and resultant sanctions.") (quoting *In re Yagman*, 796 F.2d 1165,  
 14 1183 (9th Cir.), *amended*, 803 F.2d 1085 (1986)). Not only did HTC file a baseless claim against  
 15 ST Inc., but it continues to pursue the same baseless claims against ST N.V. and ST Asia. As  
 16 discussed throughout this motion, there are no patent infringement allegations in the case that  
 17 touch ST-branded products and that would justify a defense and indemnity obligation by *any* ST  
 18 entity. And, even if there were, the only possibly relevant purchase order that HTC could be  
 19 relying on to support its claims—the one it attached to its Oct. 2, 2017 letter—provides for dispute  
 20 resolution in Taiwan. *See* Dkt. # 66, Exh. A, ¶ 12. HTC is abusing the judicial system and  
 21 harassing ST Inc. and its related companies in the process. Accordingly, and in furtherance of the  
 22 policy underlying RCW 4.84.185, the Court should grant ST Inc.'s motion, and award it fees and  
 23 costs including those incurred in filing this motion.

### 24 **III. Conclusion**

25 ST Inc. never had any connection to this case. HTC's defense, indemnity, and breach of  
 26 warranty allegations were meritless and should never have been brought. To deter further abuses  
 27 of the judicial system, and harassment of ST Inc. and its related companies (which is ongoing), the  
 28

1 Court should grant ST Inc. its total fees including \$57,351.06 for fees and costs up to and through  
2 the Court's dismissal, as well as \$7,500 for additional fees already incurred in connection with this  
3 motion, totaling, \$64,851.06.

4  
5 Dated: May 23, 2018

By: s/ Matt Berkowitz

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14 *Attorneys for Third-Party Defendant*  
15 *STMicroelectronics, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2018, I filed the foregoing with the Clerk of the Court using the CM/ECF system, and served all parties via ECF.

Dated: May 23, 2018

s/ Matt Berkowitz

Matt Berkowitz